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Philosophy and Theology: Responses to 'After-Birth Abortion'

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PHILOSOPHY AND THEOLOGY

As I discussed in the Winter 2012 issue of this journal, after the online publication of Alberto Giubilini and Francesca Minerva's article "After-Birth Abortion: Why Should the Baby Live?" there was an immediate and almost overwhelmingly negative reaction from around the world.¹ Now their article has been published in the print version of the *Journal of Medical Ethics*, alongside more than twenty reflections and reactions to it.²

The essays, on the whole, are disappointing. For the most part, these articles rehash old arguments—in some cases arguments that were first put forward four decades ago. This is not altogether surprising, since Giubilini and Minerva's article recycles (in a less sophisticated form) Michael Tooley's defense of infanticide from 1972.³

One of the best of these essays is "Yes, the Baby Should Live: A Pro-Choice Response to Giubilini and Minerva," by Bertha Alvarez Manninen.⁴ Manninen points out, quite rightly, that Giubilini and Minerva's view may even allow the killing of three-year-old children who do not in all cases fulfill Locke's definition of a person: "a thinking, intelligent being, that has reason and reflection, and can consider itself as itself, the same thinking thing, in different times, and places; which it does only by that consciousness which is inseparable from thinking, and, as it seems to me,

¹ Alberto Giubilini and Francesca Minerva, "After-Birth Abortion: Why Should the Baby Live?," *Journal of Medical Ethics*, published online (February 23, 2012).

² Alberto Giubilini and Francesca Minerva, "After-Birth Abortion: Why Should the Baby Live?," *Journal of Medical Ethics* 39.5 (May 2013): 261–263.

³ Michael Tooley, "Abortion and Infanticide," *Philosophy and Public Affairs* 2.1 (1972): 37–65.

⁴ Bertha Alvarez Manninen, "Yes, the Baby Should Live: A Pro-Choice Response to Giubilini and Minerva," *Journal of Medical Ethics* 39.5 (May 2013): 330–335.

essential to it.”⁵ Giubilini, Minerva, and Tooley surely are aware that their position entails the conclusion that children two or three years of age do not have a right to live. But they lack the courage of conviction to state this implication explicitly.

Manninen notes that “the mental traits they argue [are] a prerequisite to possessing a right to life do not appear overnight, and they are not lost instantaneously either. Is the right to life a gradient right? Does a 1-year-old have just a little bit of that right—less than a 5-year-old, but more than a neonate? If an elderly individual begins the degeneration into Alzheimer’s disease, does her right to life become gradually weaker?”⁶ This insight could be developed into what is sometimes called the equality argument. If our moral rights are based on degreed characteristics, then the more we have of a value-making characteristic, the greater the value we have and the greater the right to life we have. But this contradicts the widely held notion that all human persons have fundamentally *equal* rights. As John Finnis points out in his contribution, “The declarations of human equality (factual and moral) were solemnly reaffirmed after the sobering, thought-provoking experiences of the mid-20th century. They are a better standard for confirmation of a critically philosophical argument about these matters than is provided by laws and conventions all too easily (but truly) explicable by reference to the self-interest of people who relative to the human beings under discussion in Giubilini and Minerva’s paper are people of power.”⁷

Giubilini and Minerva deny that the newborn has equal rights, because they hold that the neonate does not have an interest in living. Manninen, following Steinbock and others, denies this by distinguishing between two meanings of “interest.” A person has an objective interest in something (what Manninen calls “interest¹”) and a subjective interest (what Manninen calls “interest²”).⁸ Nonhuman animals have an objective interest in receiving vaccinations so that they do not get sick and die, but they do not have a subjective interest in such vaccinations because they do not know what “health” is, nor do they know the connections between vaccinations and health or envision what their life will be like if they do not get vaccinations. Similarly, Manninen points out that children who are mentally handicapped have an objective interest in becoming educated to a greater degree (interest¹) even though they may not subjectively be interested in getting an education (interest²). Clearly, a human being can be benefited without appreciating it, caring about it, or even being aware of it. So too a human being can be harmed without appreciating it, caring about it, or even being aware of it. Benefit and harm are similar in that one makes

⁵ John Locke quoted in *ibid.*, 333. The original context of John Locke’s account of a person as a source of responsibility who can reflect on prior action and plan for future action is perfectly sensible. It makes no sense to hold a human being accountable for his or her actions unless that human being is a source of responsibility. Without robust self-reflection and memory, a person cannot be held accountable for his or her actions. Yet, if we really hold that the right to live is tied to the ability to be a source of responsibility, then full moral status does not begin until the so-called age of reason, customarily held to be seven years of age.

⁶ *Ibid.*

⁷ John Finnis, “Capacity, Harm and Experience in the Life of Persons as Equals,” *Journal of Medical Ethics* 39.5 (May 2013): 283.

⁸ Manninen, “Yes, the Baby Should Live,” 333.

an individual better off and the other makes an individual worse off, but having an interest² is not necessary to have an interest¹. Indeed, sometimes what a person is subjectively interested in gaining will actually be detrimental to what would be objectively good to have, such as drugs for an addict who desperately wants another fix and equally desperately wants to avoid rehabilitation.

Manninen's arguments from objective interests for attributing moral status to newborn human beings can also be applied to prenatal human beings. Unborn children too have an objective interest in living. Nevertheless, Manninen seeks to defend the conventional pro-choice view that infanticide is impermissible but abortion is permissible. She does not hold that neonatal human beings and prenatal human beings late in pregnancy differ intrinsically in their moral status. Rather, she justifies her defense of abortion by a version of the violinist argument. She writes,

No person (whether intrauterine or extrauterine) has a right to use the body of another for sustenance. In this sense, embryos and fetuses would be entitled to the same care and protection as any other person—while the vulnerable need care and protection, that protection can never extend to the point that the bodily autonomy of another may be violated. A sick patient in need of a bone marrow transplant, for example, should be cared for and protected as much as possible, and every avenue available to secure him a bone marrow transplant should be pursued. However, it would never be permissible to forcibly extract bone marrow from an unwilling “donor”, and our refusal to do so is not typically interpreted as a refusal to care for the patient. Similarly, if it were possible to care for an embryo or fetus without encroaching on another person's bodily autonomy, then I would favour pursuing that option and, if a fetus survives an abortion, then I do believe the infant should be given the same level of care and protection as any comparable newborn.⁹

According to this variation of the violinist argument, Manninen concludes that “every person has a right to decide if they wish to use their body to sustain the life of another.” I'm not sure this is true.

Imagine a father with his baby alone in a distant mountaintop cabin cut off from all forms of communication. At a certain point, the baby cries out for food, but the man is busy playing video games and says to himself, “To feed this hungry baby, I'd have to get up from my game, prepare a bottle, and then probably also hold the baby while she eats. I do not wish to use my body in this way. I have the right to decide if I wish to use my body to sustain another person. In doing this, I am doing nothing whatsoever wrong, since I am an autonomous person, and my body is free for me to use as I please.” As the weekend passes, the baby repeatedly cries out for food, and the man repeatedly invokes his previously mentioned ethical rationalization. When the baby dies, can we really claim that the father of this child has done nothing wrong?

One retort might be that the father in staying with the baby in the cabin has implicitly agreed to take on the responsibility for caring for the baby. But we can change the scenario to account for this objection. The father was simply visiting the cabin, and the mother took off from the isolated cabin in the only car available and left the father and baby there alone before the father made any (implicit) agreement.

⁹ Ibid., 334, note ii.

It will be retorted that pregnancy is much more difficult for a mother than setting aside a video game is for the father. But what is at issue is not the amount of sacrifice involved in continuing a pregnancy or in caring for a newborn. The amount of sacrifice will vary widely depending on the circumstances of the pregnancy and the circumstances of caring for a newborn. Some pregnancies will be much easier to continue than some cases of caring for neonates. In other cases, caring for a neonate will be much more difficult than continuing a pregnancy, especially since some women do not even realize that they are pregnant.¹⁰ The example of the father playing video games and fatally neglecting his baby is meant to indicate that it is not true that parents have an absolute right to decide if they wish to use their body to sustain the life of their own dependent child. Parents have moral (and often legal) duties to provide basic care for their dependent minor children, even if they must use their bodies to do so.

However, Manninen is correct that it is wrong, seriously wrong, to forcibly extract bone marrow from an unwilling “donor.” But this insight does not justify abortion. In fact, it leads to the condemnation of most abortions. In typical cases of abortion, the bodily integrity of a prenatal body is forcibly violated as the human being in utero is violently dismembered and torn limb by limb out of the uterus. If forcibly extracting bone marrow from a person who is able to survive the extraction is wrong, *a fortiori* lethal dismemberment of a person’s entire body is wrong.

Nor is it accurate to characterize abortion as simply the mother withdrawing aid and declining to use her body to support another person. An abortion, at least as far as the abortionist is concerned, is *aimed* at causing the death of the human being in utero (usually by dismemberment), not merely separating him or her from his or her mother. (I use the gendered possessive pronoun intentionally, for a prenatal human being is a “him” or “her” as much as a postnatal human being is). The criminal case of Kermit Gosnell was about botched abortions in which he failed to do what he had initially attempted to do. If he had successfully killed the prenatal children as he was attempting to do in the abortions, he would have never been convicted of killing postnatal children. Nor is abortion properly characterized as “terminating a pregnancy,” for “selective reduction” of a pregnancy, in which one twin is killed while the other twin is allowed to live, does not terminate a pregnancy but is nevertheless a case of abortion. In sum, Manninen’s arguments do not succeed in differentiating the killing of neonates from the killing of prenatal human beings.

Neil Levy argues that neonates differ in moral status from prenatal human beings because “birth is a necessary condition for the acquisition of important psychological properties (together, perhaps, with the fact that birth correlates reasonably well with age) that explains why people think it is morally significant.”¹¹ One difficulty with this suggestion is that while birth may be a necessary condition for acquiring important psychological properties, there are many other necessary

¹⁰ Jessica Jerreat, “Mother-of-Three Training for a Half Marathon Leaves Practice with a Sore Back, Discovers It’s Actually Labor Pains and Gives Birth to a Surprise Baby,” *MailOnline.com*, June 5, 2013.

¹¹ Neil Levy, “The Moral Significance of Being Born,” *Journal of Medical Ethics* 39.5 (May 2013): 327.

conditions for acquiring important psychological properties, such as having someone physically care for the newborn, speaking with the growing child, and being a living member of a species that can have such mental properties. The question then arises why having *this* necessary condition grants increased moral status while having *these* other necessary conditions does not. Why is birth so important and not, for example, verbal communication? Surely, feral children have basic rights even though, because of their lack of the necessary condition of conversation, they have developed psychological properties no greater than other nonhuman animals.

In “Of Course the Baby Should Live: Against ‘After-Birth Abortion.’” Regina A. Rini argues that a neonatal human being and a prenatal human being have differing moral status because the former has aims and the latter does not:

Specifically, the human being becomes biologically independent of its mother, in such a way that it begins to have aims that it did not before. In the womb, a fetus is essentially passive regarding its own needs, which are provided directly by the umbilical cord and uterine environment. A newborn infant, once its umbilical cord has been severed, must suddenly begin to breathe on its own, to process its own nutrients, to digest and excrete and seek out warmth. It must almost immediately begin responding to these needs, playing the tiniest role in their accomplishment through its grasping, suckling and crying. As I suggested in the last section, these needs, along with the means to accomplish them, are very plausibly understood as “aims”, at least to a similar extent that animals and certain disabled adults have aims. Newborn infants have aims, but fetuses do not. Therefore, if the vulnerability of such aims to frustration is morally significant, then there is a morally relevant difference between a fetus and a newborn. (N1) is false, so the Natal and Prenatal Equivalence Arguments both fail.¹²

The argument may be interpreted in a number of ways. Is it the baby’s grasping, suckling, and crying that make the significant difference? All these are sometimes done in utero prior to birth. Is it breathing on her own, processing her own nutrients, digesting, excreting, and seeking out warmth that make a baby girl have greater status than an unborn girl? It is hard to see why any of these things is morally important. Any rat or frog is capable of such activities, which are mere instincts rather than rationally chosen “aims.” Nor is it true that all prenatal human beings lack “aims” in the primitive, instinctive sense.

As reported in *Scientific American*:

Researchers at the University of Turin and the University of Parma in Italy used ultrasonography, a technique for imaging internal body structures, to track the motion of five pairs of twin fetuses in daily 20-minute sessions. As published in the October *PLoS ONE*, the scientists found that fetuses begin reaching toward their neighbors by the 14th week of gestation. Over the following weeks they reduced the number of movements toward themselves and instead reached more frequently toward their counterparts. By the 18th week they spent more time contacting their partners than themselves or the walls

¹² Regina A. Rini, “Of Course the Baby Should Live: Against ‘After-Birth Abortion,’” *Journal of Medical Ethics* 39.5 (May 2013): 356.

of the uterus. Almost 30 percent of their movements were directed toward their prenatal companions. These movements, such as stroking the head or back, lasted longer and were more accurate than self-directed actions, such as touching their own eyes or mouth. The results suggest that twin fetuses are aware of their counterparts in the womb, that they prefer to interact with them, and that they respond to them in special ways. Contact between them appeared to be planned—not an accidental outcome of spatial proximity, says study co-author Cristina Becchio of Turin.¹³

If this research is accurate, twins in utero have “aims” at least as much as newborns. So are we then to conclude, using Rini’s line of argument, that abortion of a singleton is permissible but abortion of twins is not?

In “Abortion, Infanticide and Moral Context,” Lindsey Porter attempts to differentiate between abortion and infanticide in the following way: “Where, when pregnant, the woman is in a unique and singular sort of a relation with the fetus, such that it makes perfect sense to say that the choice is hers, this is simply not so once the newborn is outside her body. The baby is then—almost always—in various sorts of relationships with several or even many people. And where two progenitors are involved with a birth, the relationship between the woman and the baby is not even unique: the would-be father stands in the same potential-care-relation to the newborn that the would-be mother does.”¹⁴ This analysis does not, in fact, distinguish all cases of abortion from all cases of infanticide. As just noted, prenatal twins are in a relationship with each other, yet presumably this does not change the permissibility of aborting twins. In some cases of (potential) infanticide, the woman is in a singular unique relationship with the baby. I am thinking of all cases in which a woman gives birth alone. She, and she alone, actually has a relationship with the newborn child such that she and she alone can care for that child. Furthermore, why does it make a difference to the moral status of a human being that the unique bodily relationship of the pregnant mother and her child is ended at birth? Indeed, once born, the infant is able to negatively impinge on the interests of *more* people. Only after birth would a baby disturb others, cause economic hardship, and strain the requirements of sleep of not just one person but many. So if the interests of one actual person outweigh the interests of a potential person (the baby on Giubilini and Minerva’s view), how much more would the interests of many actual persons outweigh the interest of one potential person. Reflections in the recent literature suggest the following conclusion: the arguments given against infanticide typically also undermine abortion; the arguments for abortion typically justify infanticide.

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¹³ Janelle Weaver, “Social before Birth: Twins First Interact with Each Other as Fetuses: Twins Interact Purposefully in the Womb,” *Scientific American*, January 12, 2011.

¹⁴ Lindsey Porter, “Abortion, Infanticide and Moral Context,” *Journal of Medical Ethics* 39.5 (May 2013): 352.